

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

United States of America,

Case No.: 2:17-cr-00221-JAD-EJY

Plaintiff

**Order Denying Motion to Reduce Sentence**

v.

[ECF No. 379, 382]

Rushard Burton,

Defendant

Defendant Rushard Burton is serving a nine-year sentence for armed robbery. He moves for a sentence reduction based on recent changes to the sentencing guidelines known commonly as Amendment 821. His counsel at the Federal Public Defender's office, appointed under General Order 2023-9, filed a notice of non-eligibility, disagreeing with Burton's pro se calculations.<sup>1</sup> Because Burton does not qualify for an adjustment to his offense level under Amendment 821, I deny his motion.

**Discussion**

The Sentencing Commission submitted criminal-history amendments to Congress in May 2023, they took effect in November 2023, and courts may apply them retroactively beginning in February 2024.<sup>2</sup> Burton argues that he is entitled to a two-point reduction to his offense level under § 4C1.1.<sup>3</sup> New § 4C1.1 lowers the offense level of zero-point offenders whose crime did not involve specific aggravating factors.<sup>4</sup> Zero-point offenders are defendants with no criminal-history points. The Commission found that these offenders have lower recidivism rates than

<sup>1</sup> ECF No. 387 (notice of non-eligibility).

<sup>2</sup> Sent'g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60534 (Sept. 1, 2023).

<sup>3</sup> ECF Nos. 379, 382. Burton filed two identical sentence-reduction motions.

<sup>4</sup> U.S. Sent'g Comm'n Guidelines Manual § 4C1.1 (U.S. Sent'g Comm'n 2023).

1 other offenders, including those with one criminal-history point, that warrant a reduction in  
 2 offense level.<sup>5</sup> A defendant with zero criminal-history points whose offense did not involve  
 3 threats of violence or sexual acts may now receive a two-level decrease in his offense level.<sup>6</sup>

4 Burton contends that he is eligible for a sentence reduction based on this amendment  
 5 because he was incorrectly assessed one criminal-history point when he should have been given  
 6 zero under United States Sentencing Guidelines § 4A1.2(c).<sup>7</sup> But he misreads § 4A1.2(c).  
 7 Misdemeanor and petty offenses are generally counted when computing criminal-history points  
 8 unless they are explicitly listed in § 4A1.2(c)(1) and (2) and meet other criteria.<sup>8</sup> Burton  
 9 received one criminal-history point for petit larceny and buying, selling, or receiving stolen  
 10 property.<sup>9</sup> These offenses are not included in § 4A1.2(c) nor are they similar to any of the listed  
 11 offenses there. So because Burton was correctly assessed one criminal-history point for his prior  
 12 offense, he is not a zero-point offender and he is not entitled to a sentence reduction.

### 13 Conclusion

14 IT IS THEREFORE ORDERED that Rushard Burton's motions for a sentence reduction  
 15 under Amendment 821 [ECF No. 379] and [ECF No. 382] are **DENIED** with prejudice.

16  
 17   
 18 U.S. District Judge Jennifer A. Dorsey  
 19 June 25, 2024

20 <sup>5</sup> U.S. Sent'g Comm'n, *Amend. to the Sent'g Guidelines* (2023),  
 21 [https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-](https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf)  
 22 [amendments/202305\\_Amendments.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf).

23 <sup>6</sup> *Id.*

<sup>7</sup> ECF No. 379 at 2.

<sup>8</sup> U.S. Sent'g Comm'n Guidelines Manual § 4A1.2(c) (U.S. Sent'g Comm'n 2023).

<sup>9</sup> Presentence Investigation Report at ¶ 74.